IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1563 of 2007
With
CIVIL APPLICATION No. 4012 of 2007
In
FIRST APPEAL No. 1563 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

SHANKERBHAI KHODABHAI PATEL - Appellant
Versus
GUJARAT ELECTRICITY BOARD - Defendant

==========

Appearance :
MR KIRTIDEV R DAVE for Appellant(s) : 1,MR RAHUL K DAVE for Appellant(s) : 1,
None for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/04/2007

ORAL JUDGMENT

1. Present appeal has been filed by the

appellant – original defendant challenging judgment and decree dated 29th September, 2006 passed by the learned Senior Civil Judge, Surendranagar in Special Civil Suit No. 11 of 2005 by which the learned Trial Court has partly allowed the suit of the respondent – original plaintiff – Gujarat Electricity Board.

2. Respondent herein – original plaintiff – Gujarat Electricity Board filed Special Civil Suit No. 11 of 2005 against the appellant herein for recovery of Rs.4,63,910.33 paise which was on the basis of additional bill (theft) along with delay payment charges. It was the contention on behalf of the original plaintiff that the defendant was having lighting connection and there was no connection for industrial purpose. That on checking by the Officers, the connection of the defendant on 09.02.02 in presence of Nagarbhai Shankerbhai Mandalia son of the defendant, he was found committing theft of electric power by taking power from L.T.Line passing near his house by connecting his cable with 3 aluminum wire to his house having three 63'A' cutouts and two main switches and thereby was running diamond factory as such. As per the statement of the defendant, he

consumed 6590 watts, though the defendant was not the lawful consumer of the plaintiff Company. It was further the case of the plaintiff that checking sheet and statement are duly signed by the Officers of the plaintiff Company and the son of the defendant. The defendant was issued impugned bill as per condition No.34 and ABCD formula to the tune of Rs. 2,99,296.98 paise. As said amount was not paid by the defendant, the defendant was liable to pay Delay Payment Charges of Rs. 1,64,613.35 paise i.e. in all Rs. 4,63,910.33 paise. It was the case on behalf of the plaintiff that as the defendant did not make the payment of the said bill, though served with legal demand notice, therefore, the suit was filed for aforesaid reliefs. The defendant appeared and filed written statement at Ex.9. He denied almost all the averments of the plaint. He denied that he had no industrial electric connection and that; a false bill is issued to him only to harass him in the case of power theft. He also denied that any checking was carried out on 09.02.2002 by the Officers of the Company in presence of his son Nagarbhai. He denied that he was committing theft of electric theft as alleged. The

trial Court framed issues at Exh. 10.

3. On behalf of the plaintiff Junior Engineer was examined at Exh.36 and one Pinakin Amrutlal Patel, Deputy Engineer was examined at Ex. 17. The plaintiff – Company has produced documentary evidence consisting of Rojkam dated 09.02.2002 at Exh.28; Statement of Nagarbhai Shankerbhai recorded by the Officer of Plaintiff-Company at Exh.29; theft bill amounting to Rs. 2,99,296.98 paise vide Exh.30; carbon copy of letter dated 24.06.2006 written by the plaintiff – Company addressing to the defendant by which disputed theft bill was sent vide Exh.31; acknowledgment receipt vide Exh.32; earlier bill in connection with the checking dated 09.02.2002 of amount of Rs. 1,95,320.77 paise; calculation sheet vide Exh.34; and calculation sheet of revised bill in connection with the checking vide Exh. 35.

4. On behalf of the defendant, the defendant examined at Exh. 45. Except oral evidence of the defendant, the defendant did not examine any other witness as well as did not produce any documentary evidence except xerox copy of bill amounting to Rs. 2193.04 paise at Exh. 46 and 48.

5. Considering rival submissions, the learned trial Court allowed the aforesaid suit directing the defendant to pay Rs. 4,63,910.33 Paise (Rupees Four Lacs Sixty Three Thousand Nine Hundred ten and paise thirty three only) to the plaintiff-Company with interest at the rate of 9% per annum on the suit bill of Rs. 2,99,296.98 paise (Rupees Two lac ninety Nine Thousand Two Hundred ninety Six and paise ninety Eight only) from the date of institution of the suit till its realisation. Being aggrieved and dissatisfied by the aforesaid decree and judgment, the appellant – original defendant has preferred First Appeal.

6. Shri K.R.Dave, learned Advocate appearing on behalf of the appellant – original defendant has vehemently submitted that the plaintiff has failed to prove Rojkam and in absence of proving Rojkam the learned Trial Court has committed an error in decreeing the suit. It is submitted by him that as such the bill itself was illegal and that no theft has been committed by the defendant more particularly when the defendant was not having any industrial

connection. It is submitted that when the defendant was not having any industrial connection, it was not open for the plaintiff to issue bill on the basis of industrial connection. Therefore, it requested to admit First Appeal and allow the same.

7. This Court by order dated 22.03.2007 has called for Record and Proceedings. This Court has considered the Records and Proceedings as well as the judgment and decree passed by the learned trial Court. That there was checking on 09.02.2002. Rojkam was prepared and it was found in presence of one Nagarbhai Shankerbhai son of the defendant, that; he was committing theft of electric power from LP line passing near his house by connecting his cable with 3 aluminum wire to his house having three 63”A” cutouts and two main switches and thereby was running diamond factory. As per the statement of the defendant, he consumed 6590 watts, though the defendant was not the lawful consumer of the plaintiff-Company. Thus, the defendant was using electric power for running diamond factory which is for industrial use. For the purpose of industrial use, where electric power is used, the same can be done if there is industrial

connection. Rojkam was signed by the son of the defendant who was present at the relevant time. It is the contention on behalf of the defendant that no such incident had happened and there was no checking and/or no theft committed by him and no Rojkam was prepared in presence of his son. It is required to be noted and as observed by the trial Court, the defendant has not examined his son to controvert Rojkam. It is also required to be noted that the defendant was served with bill amounting to Rs. 1,64,613.35 and thereafter revised bill on the basis of calculation while adopting ABCD formula, it was raised to Rs. 2,99,296.98. After the service of aforesaid two bills, the defendant never challenged the bills. The defendant never disputed the bill amounts. After service of statutory notice when the amount was not paid towards aforesaid bills, the plaintiff – Gujarat Electricity Board has filed the aforesaid suit for recovery. When the bills itself are not challenged by the defendant earlier and the suit for recovery came to be filed it is not open for the defendant to challenge the bills subsequently.

8. On considering evidence on record,

documentary as well as oral and in absence of examining Nagarbhai Shankerbhai Mandalia son of defendant who has singed Rojkam and in whose presence Rojkam was drawn, it cannot be said that the trial Court has committed any error in decreeing the suit. Considering above, there is no substance in the present appeal, same is required to be dismissed and, is accordingly dismissed.

9. In view of dismissal of main First Appeal, no order in Civil Application. The Civil Application is disposed of.

[M.R.Shah, J.]

satish